

Senate Bill No. 312

CHAPTER 426

An act to amend Sections 30005.5, 30123, 30131.2, 30177, and 30178.2 of, and to add Section 30176.2 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 2001. Filed with
Secretary of State October 2, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 312, Alpert. Cigarette and tobacco products taxes: returned products.

The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes at specified rates. For purposes of that law, "untaxed tobacco product" is defined as any tobacco product that has not yet been distributed in a manner that results in a tax liability.

This bill would include as an "untaxed tobacco product" any tobacco product that was distributed in a manner that resulted in a tax liability, but that was returned to the distributor after the tax was paid and for which the distributor claimed a deduction, refund, or credit.

The Tobacco Tax and Health Protection Act of 1988 (Proposition 99), which was adopted by the voters at the general election held on November 8, 1988, imposes a surtax on the distribution of cigarettes in addition to the tax imposed pursuant to the Cigarette Tax Law as of the effective date of the adoption of Proposition 99, and imposes a tax on the distribution of certain tobacco products at an equivalent total rate determined pursuant to specified criteria.

The California Families and Children Act of 1998 (Proposition 10), which was adopted by the voters at the general election held on November 3, 1998, imposes a surtax on the distribution of cigarettes in addition to the tax imposed pursuant to the Cigarette Tax Law and the Tobacco Tax and Health Protection Act of 1988 as of the effective date of the adoption of Proposition 10, and imposes a tax on the distribution of certain tobacco products at an equivalent rate.

This bill would provide that the wholesale cost used to calculate the amount of those taxes does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the amount paid in cash or credit.

The bill would also make changes with respect to refunds and credits, related to the other provisions of this bill.

The Tobacco Tax and Health Protection Act of 1988, an initiative measure, and the California Families and Children Act of 1998, another initiative measure, each require that amendments to their provisions be consistent with the act's purposes, and be approved by either a $\frac{4}{5}$ or $\frac{2}{3}$ vote of both houses of the Legislature.

This bill would declare that it amends those measures in a manner that furthers and is consistent with the purposes of those measures, and that it would require a $\frac{4}{5}$ vote for passage.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Section 30005.5 of the Revenue and Taxation Code is amended to read:

30005.5. "Untaxed tobacco product" means either of the following:

(a) Any tobacco product that has not yet been distributed in a manner that results in a tax liability under this part.

(b) Any tobacco product that was distributed in a manner that resulted in a tax liability under this part, but that was returned to the distributor after the tax was paid and for which the distributor has either claimed a deduction pursuant to subdivision (c) of Section 30123, or a refund or credit pursuant to Section 30176.2 or Section 30178.2.

SEC. 2. Section 30123 of the Revenue and Taxation Code is amended to read:

30123. (a) In addition to the tax imposed upon the distribution of cigarettes by this chapter, there shall be imposed upon every distributor a tax upon the distribution of cigarettes at the rate of twelve and one-half mills (\$0.0125) for each cigarette distributed.

(b) There shall be imposed upon every distributor a tax upon the distribution of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the combined rate of tax imposed on cigarettes by subdivision (a) and the other provisions of this part.

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of



rehandling and restocking returned merchandise during the previous accounting cycle.

SEC. 3. Section 30131.2 of the Revenue and Taxation Code is amended to read:

30131.2. (a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and any other taxes in this chapter, there shall be imposed an additional surtax upon every distributor of cigarettes at the rate of twenty-five mills (\$0.025) for each cigarette distributed.

(b) In addition to the taxes imposed upon the distribution of tobacco products by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121), and any other taxes in this chapter, there shall be imposed an additional tax upon every distributor of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the rate of tax imposed on cigarettes by subdivision (a).

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

SEC. 4. Section 30176.2 is added to the Revenue and Taxation Code, to read:

30176.2. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 that is paid on the distribution of tobacco products that were returned by a customer, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the



average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

SEC. 5. Section 30177 of the Revenue and Taxation Code is amended to read:

30177. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the denominated values, less the discount given on their purchase, of stamps or meter impressions affixed to packages of cigarettes which have prior to distribution become unfit for use, unsalable or have been destroyed, or which after distribution have become unfit for use or unsalable and have been returned for credit or have been replaced, and the board has proof of that return or destruction.

SEC. 6. Section 30178.2 of the Revenue and Taxation Code is amended to read:

30178.2. In lieu of the refund of the tax on tobacco products pursuant to Section 30176.1 or Section 30176.2, a distributor eligible for that refund may elect to claim a credit against taxes imposed pursuant to this part equal to the amount which would have been refunded if a claim had been made pursuant to Section 30176.1 or Section 30176.2.

SEC. 7. The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

